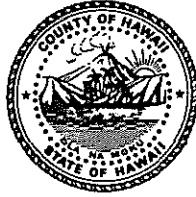


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL

January 20, 1995

Mr. Klaus Conventz
P.O. Box 2308
Kailua-Kona, Hawaii 96745

Dear Mr. Conventz:

Variance Application WH(VAR94-54)
Applicant: KLAUS CONVETZ
Variance from Minimum SIDE YARD SETBACK Requirements
Tax Map Key: 7-6-020: 001

(VAR 629)

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow an EXISTING ONE STORY SINGLE FAMILY DWELLING with an 7.8 foot SIDE YARD and a 5 foot SIDE YARD SETBACK and a 2.2 foot open clear space yard in lieu of the minimum 8 FOOT SIDE YARD SETBACK and 4 FOOT OPEN CLEAR SPACE YARD as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), SECTION 25-124 (Minimum yards)(a)(1)(B).

The subject property is located on the east side of Haku Place approximately 30 feet east of the Haku Place/Kupuna Street intersection in the Kilohana Subdivision Unit I-A, North Kona, Hawaii, TMK: 7-6-20: 1.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kilohana Subdivision, Unit 1-A consisting of 7,983 square feet of land area.
2. The subject property is a corner lot which is bounded on the west and south by the common area open space for the subdivision.
3. The subject single family dwelling was constructed in 1984 under Building Permit No. 006256 issued on March 30, 1984 and closed on August 7, 1984.

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4. A detailed scaled plot plan prepared by the consultant shows the existing dwelling with 7.8 foot side yard setback from the north side property line and a 5 foot side yard setback and open lanai with a 2.2 foot open clearspace yard on the south side. As such, the subject dwelling encroaches into the north side yard setback by 2 and 3/8 inches, and into the south side yard by 5 feet and 2 feet and 9 inches.
5. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
6. When the plans were approved by the Planning Department, the plans would have had to show that all minimum required setbacks were going to be adhered to for the proposed dwelling in 1984.
7. It appears that a minor construction staking error occurred in 1984 when the dwelling was constructed in the siting of the structure on the property. It also appears that a very minor siting error was done at the time of construction with the minuscule encroachments. No other evidence has been found to show otherwise.
8. It has been over 11 years since the construction of the existing dwelling which was approved by the County and the petitioner is trying to resolve a situation which he had no control over and has honestly conducted a survey to ensure the disclosure of all facts concerning the dwelling.
9. The variance application was filed with the Planning Department on AUGUST 12, 1994.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

1. The subject property is a corner lot with the dwelling and the open lanai encroachments into the south side yard setback which faces the common open space area and Kupuna Street.

2. The 2 and 3/8 inches encroachment into the north side yard, 5 foot and 2 feet and 9 inches into the south side yard are minuscule in relationship to the minimum required 8 feet side yard setback. These minuscule encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the side yards, especially in the south side property line where it faces on the common open space area and Kupuna Street.
3. The applicant on his own volition is honestly trying to resolve this long standing problem which was not intentionally created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.
4. Any architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships of the applicant when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicant when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

1. The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling on the subject property is presently situated 7.8 feet from the north side property line and 5 feet and 2 feet-9 inches from the south side yard property line.

Therefore, although only a 7.8 foot, 5 foot and 2 foot-9 inch side yard setbacks are being provided against the north and south side property lines, the encroachments are so minuscule and are not visually perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and dwelling to the north.

Therefore, while the Zoning Code requires a minimum 8 foot side yard setback, in this particular case, the encroachments are so minuscule that it will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing dwelling complies with the minimum yard setbacks requirements of the Zoning Code.

Mr. Klaus Conventz
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There were no objections from any of the participating government agencies or any surrounding property owners.

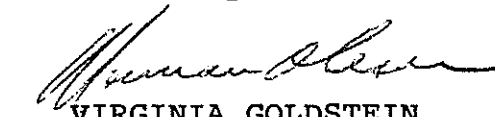
Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

This variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,


VIRGINIA GOLDSTEIN
g Planning Director

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xc: West Hawaii Office